IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21953 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAY NARENDRABHAI THAKKAR AND ANR.
Versus
DILIP JAYANTILAL S/O GYANCHAND SHAH AND ORS.

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Appearance :
Mr PARSI KAVINA WITH MR ASHISH M DAGLI for Petitioners:1-2
MR DAKSHESH MEHTA for Respondent:1

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 24/08/2007

ORAL JUDGMENT

1. Rule. Shri Dakshesh Mehta, learned counsel waives

service of notice on behalf of respondent no.1.

2. The present Special Civil Application has been preferred by the original plaintiffs against the order passed by the learned Small Cause Court No.6, Ahmedabad dated 10th March, 2006, below Exh.40 in HRP Civil Suit No.750 of 2004, whereby an amendment application preferred by the original plaintiffs was partly allowed. The Trial Court has allowed the joining of the heirs of the tenants,-defendants, but, relevant averments and allegations sought to be amended in the plaint in respect of those legal heirs is not permitted to be amended.

3. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order of the learned Small Cause Court No.6, Ahmedabad dated 10th March, 2006, below Exh.40 in HRP Civil Suit No.750 of 2004, mainly for the following facts and reasons:

3.1 It appears that the present petitioners are original plaintiffs. They are the purchaser of the suit property. The respondents are the original defendants and tenants in the property in

question. Property was purchased by the original plaintiffs on 8th September, 1999. Original tenants had also expired when the property was purchased from the owner of the property. Suit was filed for vacating the premises on the ground of arrears of rent, availability of suitable accommodation and alterations in rented premises of permanent nature. Suit is bearing HRP Civil Suit No.750 of 2004. Initially, the plaintiffs were knowing only two tenants being legal heirs of Ramanlal Shah and Jayantilal Shah and therefore, suit was instituted only against some of the heirs of the Ramanlal Shah and Jayantilal Shah.

3.2 It also appears, from the facts of the case, that original plaintiffs have subsequently purchased the property i.e. after death of Ramanlal Shah and Jayantilal Shah who have expired on 13th March, 1974 and 13th September, 1996 respectively, they were not knowing the names of all the legal heirs, and, therefore, an application below Exh.40 was moved in the pending suit for joining the remaining legal heirs of Ramanlal Shah and Jayantilal Shah. These legal

heirs are permitted to be joined, therefore necessary averments were also required to be made for those newly added parties-defendants, and, therefore, an application below Exh.40 was preferred to amend the memo of the plaint. The Trial Court has allowed only names to be amended i.e. parties to be joined but so far as averments in respect of those parties is concerned, the same is not allowed. Thus, partly an application below Exh.40 is allowed and substantially it is rejected.

3.3 It also appears, from the facts of the case that the trial is not yet commenced. Only such affidavit has been filed by plaintiffs as Examination-in-chief. Cross-examination is yet to be taken place. Suit has not reached upto the stage of final hearing.

3.4 It also appears, from the facts of the case, that the plaintiffs' amendment application below Exh.40 is preferred in the year 2005. Suit was instituted in the year 2004. Thus, there is no much delay in filing an application Exh.40.

4. Looking to the nature of the amendment sought for below Exh.40, I am clearly of the opinion that it does not change the cause of action nor does it change the nature of the suit. On the contrary, amendment is sought to fortify or strengthen the contentions already raised in the suit. Looking to the nature of amendment, there will not be any deviation from the pleadings. If the amendment is allowed, it is not going to cause any prejudice to the tenants,-defendants.

5. Learned counsel Mr.Kavina, appearing for the petitioner has relied upon the decision rendered by the Hon'ble Supreme Court in the case of **Pradeep Singhvi and Anr. Vs. Heero Dhankani And Ors.** reported in **(2004) 13 SCC 432** as well as decision rendered by the Hon'ble Supreme Court in the case of **Pankaja and another Vs. Yellappa (D) by L.Rs.and Ors.** reported in **AIR 2004 SC 4102** and it has been correctly pointed out that if no prejudice is going to be caused to either parties generally and normally the amendment ought to be allowed and only if the amended allegations are time bar, the

amendment ought not to be allowed. In the facts and circumstances of the present case and looking to the application below Exh.40 in pending suit, I am of the opinion that respondents are tenants. Landlord wants to join legal heirs of deceased,-tenants. Tenants are in occupation of the premises. Suit is of year 2004. Application below Exh.40 is of year 2005. There is no cross-examination of the plaintiffs. Only affidavit of Examination-in-chief of plaintiffs is filed. In view of these facts no prejudice going to cause to the tenants,-defendants if the amendment below Exh.40 is allowed. Similarly, looking to the nature of amendment, it will not be a time bar statements which are sought to be amended of facts. Ground agitated in plaint is under Section 13 of the Bombay Hotel, Lodging and Houses Rents Control Act, 1947. Even if any of the grounds stated in Section 13 arises during the course of hearing of the suit like availability or suitable alternative accommodation etc. and if any of such grounds, come to know to original plaintiff,-landlord, the same can be amended and inserted in the plaint.

6. Learned counsel has also relied upon the decision reported in **(2006) 6 SCC 498** in the case of **Baldev**

Singh and Ors. Vs. Manohar Singh and Anr. In view of the aforesaid decision, it is pointed out that trial has not yet commenced. The aforesaid decision gives guidelines when it can be said that the trial has commenced. In the facts of the present case and in view of aforesaid judgments only, an affidavit of the plaintiff has been filed in the form of Examination-in-chief. Cross-examination is yet to be started by the original defendants. The suit has not reached to the state of final hearing.

7. It is contended by learned counsel appearing for the original defendants that plaintiffs ought to have pointed out the fact to the Trial Court that facts sought to be amended/to be added in plaint was not known to the plaintiffs despite due diligence and therefore rightly Section 40 has been decided by the Trial Court. This contention of the original tenants is not accepted by this Court mainly for the reason that it has been stated more than once in an Exh.40 application that as the plaintiffs have purchased the property on 8th September, 1999 and the tenants i.e. Ramanlal Shah and Jayantilal Shah have expired in the year 1974 and 1996 respectively, they were not knowing all the legal heirs of the

deceased tenants. But no sooner did they came to know about the rests of the legal heirs of the deceased tenants, immediately an application has been moved. In this set of circumstances couple with the fact that no trial has been yet commenced and looking to the nature of the amendment and the aforesaid judicial pronouncements, the order passed by the Trial Court is not in consonance with the facts of the case and is dehors the provisions of Code of Civil Procedure, 1908 and hence, the same is hereby quashed and set aside. Amendment application below Exh.40 in HRP Suit No.750 of 2004 is allowed.

8. Rule is made absolute. Direct Service is permitted.

(***D.N.PATEL, J.***)

Amit/-